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**CENTRAL FAX CENTER****AUG 16 2007**App. Serial No 10/522,466  
GB020121 US**Remarks**

Claims 1-22 are currently pending in the patent application. For the reasons and arguments set forth below, Applicant respectfully submits that the claimed invention is allowable over the cited references.

The instant Office Action dated May 16, 2007 indicates an objection to the specification because of the lack of section headings, an objection to claims 6-22 as being in improper form, objections to claims 6-9 because of informalities, and lists the following rejections: claims 12-22 stand rejected under 35 U.S.C. § 112(2) as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; claim 22 stands rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter; and claims 1, 3 and 6-22 stand rejected under 35 U.S.C. § 103(a) over Andersson *et al.* (U.S. Patent No. 5,144,948). The instant Office Action also notes that claims 2, 4, and 5 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding the Office Action's suggestion to add section headings, Applicant respectfully declines because the indicated suggestions in 37 C.F.R. § 1.77(b) are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 C.F.R. § 1.51(d) are only guidelines that are suggested for applicant's use. They are not mandatory, and in fact when Rule 77 was amended in 1996 (61 FR 42790, Aug. 19, 1996), Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, stated in the Official Gazette:

"Section 1.77 is permissive rather than mandatory. ... 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in 1.77."

In view of the above, Applicant prefers not to add section headings.

Regarding the objection to claims 6-22 because of improper multiple dependency, Applicant has amended these claim such that they are no longer in multiple dependent form. Thus, Applicant request that the objection to claims 6-22 be removed.

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Regarding the objection to claims 6-9 because of informalities, Applicant has amended these claims to clarify that "a mode" refers to the first mode and that "an event" refers to the first event. As such, Applicant requests that the objection to claims 6-9 be removed.

Applicant respectfully traverses the Section 112(2) rejection of claims 12-22 based upon the phrase "operable to" because the claims do particularity point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action asserts that the claim limitations are merely "use limitations." Applicant submits that the claim limitations are not merely use limitations as they provide positive limitations upon the various structures. For example, claim 12 includes a first port (operable) to receive the first event signal. Thus, the structure of the first port must be such that it is able to receive the first event signal. Accordingly, the limitations do provide positive limitations upon the claimed invention. Moreover, the Office Action cites M.P.E.P. § 2111.04 in support of this rejection; however, this section of the M.P.E.P. concerns claim scope not being limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. The claim limitations neither merely suggest nor make optional the limitations. The claim limitations also clearly limit the claim to a structure (an apparatus) that includes numerous structures (e.g., first port, CPU and non-volatile storage). Therefore, the Section 112(2) rejection of claims 12-22 is improper and Applicant request that it be withdrawn. Notwithstanding, Applicant notes that the word operable is no longer present in the claims as amended, and thus, the Office Action's basis for the rejection is moot.

Applicant respectfully traverses the Section 101 rejection of claim 22 because the claim is directed to statutory subject matter. The Office Action appears to somehow be asserting that the claimed *apparatus* of claim 22 is merely a computer listing. Applicant notes that Claim 22 depends from apparatus claim 12, and thus, claim 22 necessarily includes all of the limitations of claim 12 (e.g., structural elements including a first port, non-volatile storage, and a CPU). Applicant submits that claim 12 is clearly directed to statutory subject matter and that claim 22 provides further limitation to the apparatus of claim 12 (e.g., the data processing apparatus further includes software configured for

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carrying out various steps). Thus, the claim is directed to statutory subject matter as it is directed toward an apparatus having all of the limitations of claim 12. Accordingly, the Section 101 rejection of claim 22 is improper and Applicant requests that it be withdrawn.

Applicant respectfully traverses the Section 103(a) rejection of claims 1, 3 and 6-11 because the Office Action fails to establish a *prima facie* case of obviousness. According to M.P.E.P. § 2142, the "examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." The Office Action has merely presented a conclusion that it would have been obvious to apply the teachings of Andersson for the purpose of obtaining configuration data. "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." M.P.E.P. § 2144.03. It is entirely unclear what the Examiner is asserting; what the configuration data is or how such configuration data would somehow increase the reliability of the system. Andersson teaches an apparatus for stimulating living tissue, and the cited portion of Andersson teaches adjustments necessary due to the internal resistance of the battery increasing with time. *See, e.g.*, Col. 4:56-58. In this context the Office Action's obvious-type argument is far from presenting an instant and unquestionable demonstration of being well-known, and thus, under M.P.E.P. 2144.03, the Office Action must present adequate support for such an assertion. Accordingly, the rejection is improper and Applicant requests that it be withdrawn.

Notwithstanding the above issues, Applicant has amended claim 1. Accordingly, Applicant further submits that the Section 103(a) rejection of claims 1, 3 and 6-11 cannot stand because the cited portions of the Andersson reference do not correspond to claim limitations directed to storing configuration data in the timing unit using the a value of an element of the timing unit. *See, e.g.*, Col. 2:1-54. Accordingly, Applicant requests that the Section 103(a) rejection of claims 1-11 be withdrawn.

Applicant respectfully traverses the Section 103(a) rejection of claims 12-22 because the Office Action fails to establish a *prima facie* case of obviousness. According to M.P.E.P. § 2142, the "examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." In this instance, the Office Action simply

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concludes that it would be obvious that the Andersson reference teaches the apparatus without citing to any portion of the reference as allegedly corresponding to the claim limitations. The Office Action fails to provide any support for its conclusion of obviousness in direct contradiction to the M.P.E.P. and relevant law. Moreover, as discussed above in connection with the rejection of claim 1, the Office Action has improperly asserted a Section 103(a) rejection without proper support. For instance, Applicant has reviewed the relied upon portions of the Andersson reference and is unable to determine what portion of the Andersson reference would correspond to the claimed CPU that runs a software program in response to the configuration data determined from an event signal from the timing unit. Thus, the Section 103(a) rejection of claims 12-22 is improper and Applicant requests that it be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063 (or the undersigned).

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